

## CHAPTER 9

### LEGAL ISSUES OF SHIPBOARD MEDICINE

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# LEGAL ISSUES OF SHIPBOARD MEDICINE

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## INTRODUCTION

The delivery of medical care to an injured patient, whether crew member, passenger, or visitor, invites consideration of legal issues which the mariner should think about prior to the urgent need of providing medical care. As in all aspects of maritime safety, planning is necessary. Planning for medical emergencies should include establishing protocols for proper and competent medical treatment of the injured that is consistent with the standards of medical practice. Protecting the rights of the patient, and the interests of the ship, the owner, and the provider of care should also be considered.

The purpose of this chapter is to alert the mariner to some of the legal issues of common concern, and to serve as a guide in developing a plan to address these medically, in concert with sound legal advice.

An injured crewmember should receive the best available care, within the reasonable limits and training by the available providers, without any interruption for consideration of whether the provider might be sued for attempting to do so. A medically sound plan, realistic in context, and protective of the interests of all parties, should be established.

General maritime law, or Admiralty law, developed historically in response to maritime legal disputes that arose from three principle sources:

- Common law: customary law among maritime nations that has evolved and is well recognized in the ways of ships and seafaring. This law evolved from ancient sea codes to more recent written decisions issued by Admiralty judges, based on historical precepts, or previous written decisions. This is the general maritime law.

- Statutes: domestic laws of any nation's legislative process, specific to that nation, which carry the force of law for all vessels carrying the flag of that country.
- International agreement: articles such as treaties or conventions that have been developed, and a country may have signed, thereby binding vessels under its flag, and its mariners, to obey as law the terms and conditions of that agreement.

The requirements for operator licensing, vessel equipment, personnel training, and operation are generally found as products of statutory law or, to a lesser extent, international agreement. The general maritime law, however, is less apparent, since it is not typically codified, and the mariner should rely upon an experienced attorney to assist in navigating the waters of maritime case law.

## DUTIES OF THE OWNER OF THE VESSEL

The owner of a vessel inherits specific duties or responsibilities that are established as law, either by statute, or within the general maritime law. Some of these duties are provided to seamen and crew, for whom the law has generated an exceptionally protective regime in recognition of the difficult and rigorous working conditions, and the historical difficulties endured. For other classes of persons, the law is less protective, and more similar to land based expectations.

It should be stressed that a certain reasonableness of care is weighed into decisions while onboard a vessel. Safety and well being of other crewmembers and passengers as well as cargo, weather conditions, location of nearest port plus the resources available at a given port, factor into the decision making process. The following are some basic areas of responsibility most commonly belonging to the vessel owner and some examples of liability issues pertaining to particular incidents that may arise.

Seaworthiness of the vessel: The owner and operator of a vessel is held to warranty the condition of a vessel as reasonably fit for the intended purpose of that vessel. Since 1903, when a case concerning a ship named the *OSCEOLA* was decided by the Supreme Court,<sup>1</sup> an absolute nondelegatable duty was found to rest upon the vessel<sup>2</sup> and owner to furnish a seaworthy vessel. Any failure of the vessel or her crew to perform, that results in an injury to a seaman, is an apparent breach of this duty and gives rise to the seaman's claim of unseaworthiness under the general maritime law. This absolute duty of seaworthiness arises under the presumption and

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<sup>1</sup> 189 U.S. 159 (1903).

<sup>2</sup> The vessel retains a separate legal identity and can be sued directly by parties having a claim against it.

reasoning that the seaman is subject to a very demanding job, and does not have the opportunity to inspect the vessel for deficiencies in equipment or other aspects.

**Seaworthiness of the crew:** The crew must be suitably seaworthy as well in respect to ability, experience, and number<sup>3</sup> A crew's conduct, i.e. violence, may also render it unseaworthy. The availability and quality of medical care rendered by the ship is also a measure of seaworthiness.<sup>4</sup> This duty is apparent so long as the vessel remains "in navigation" which would not include dry dock.

**Maintenance and cure of the crew:** Admittedly this could be considered part of keeping a vessel seaworthy, as it arose traditionally out of maritime culture as an incentive to encourage seamen to defend their vessel from piracy.<sup>5</sup> This principle requires the owner to pay to maintain the mariner by way of accommodation and food, and to cure the sickness or disability to the maximum point of recovery, if the illness or injury was acquired in performance of the ship's business.

**The Jones Act:** The Jones Act, 46 U.S.C. § 698, was passed in 1920 to provide injured seamen with a right to sue a vessel owner for negligence via a jury trial. This is distinguished from, and does not preclude an Admiralty action for unseaworthiness, which does not provide for trial by jury. The Jones Act states in part, that the shipowner owes to a sick or injured seaman the duty to furnish (1) reasonable care, and (2) nursing and hospitalization. For the purposes of the Jones Act the Master is charged with fulfilling the owner's duty. The ship will not be held responsible for error of judgement on the part of the officers, if their judgement is conscientiously exercised with reference to existing conditions<sup>6</sup>.

In one case,<sup>7</sup> the Master of the vessel knew of a seaman's illness, placed him in a small, poorly ventilated, hot room, in spite of the fact that the ship's hospital room was available. **The court held that** the seaman was entitled to recover **under** the Jones Act. **The court found that under the circumstances**, he should have been placed in **other** quarters such as the ship's hospital. Not doing so **imposed** civil liability on the ship owner.

Certain sections of the Jones Act provide for the liability upon the Master and the owner, such as a \$500 penalty for failure to keep proper medicines aboard the vessel.<sup>8</sup>

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<sup>3</sup> Comeaux v. T.J. Jones & Co., 666 F.2d 294 (5<sup>th</sup> Cir. 1982). See also, Crew Size and Maritime Safety, National Research Council, National Academy Press (1990).

<sup>4</sup> Annot., Ship's Liability: Medical Care, 16 A.L.R. Fed. 87.

<sup>5</sup> See John W. Sims, the American Law of Maritime Personal Injury and Death: An Historical Review, 55 TUL. L. REV. 973, 975 (1981).

<sup>6</sup> MacQueen v. C.G., 40527, U.S. Coast Guard, 287 F. Supp. 778 (D.C. Mich. 1968).

<sup>7</sup> Ugolini v. States Marine Lines, 71 Wash. 2d 404, 429 P.2d 213 (1967).

<sup>8</sup> Jones Act 46 U.S.C. § 11102

To require a seaman who is sick or injured to perform work substantially detrimental to his or her condition, is failure to provide medical care and attention to which he or she is entitled, unless his or her service is required in the face of danger or emergency.<sup>9</sup>

In another case, a Master was aware from his complaints of chest pains that a seaman was having heart trouble. The ship owner was found negligent in failing to provide the seaman with proper medical treatment at the time of his first heart attack and subsequent heart attacks. The seaman was allowed to climb stairs, leave the ship, and make his way to the hospital, all without any assistance.<sup>10</sup> In another case, a Master failed to administer penicillin to a burned seaman, although it was available, and to render first aid treatment although the ship passed within a mile of a first aid station. This was found to constitute negligence on the part of the ship owner.<sup>11</sup> On the other hand, a slight injury to a seaman's finger did not require landing at some port before the ship reached its destination, since it could not be fairly inferred that neither the seaman or the engineer who extracted the steel from the injured finger anticipated that the slight wound would amount to anything serious. In this case, the finger eventually required amputation due to complications secondary to infection.<sup>12</sup>

Once it is determined that medical care is needed and the Master determines that the seaman should see a doctor, the ship owner's responsibility does not end. Since medical services are provided under both contract and statute, negligence of the doctor can be imputed to the ship owner-employee, even if the ship's Master took due care in selecting a reputable physician to treat the seaman. If the physician is found negligent, the ship owner is still liable.<sup>13</sup>

These cases involving physicians demonstrate two ways that the ship owner may be found negligent. One is improperly providing for seaman care, including the negligent selection of a doctor; the other is in the negligence of the doctor as a practitioner. In determining negligence, the jury or the judge must take into account such factors as whether the ship was at sea or in port; if in port, what medical facilities were available, were such facilities obviously limited or inadequate; and what means were reasonably obtainable to transfer the seaman to the nearest adequate facility.

No U.S. law exists requiring a physician to be on board a passenger vessel. When a carrier does employ a doctor for the convenience of the passengers, the carrier has a duty to employ one who is qualified and competent. If the carrier breaches this duty, liability for negligence may exist. But, if the doctor is negligent in treating a passenger, that negligence will not be imputed to the

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<sup>9</sup> Point Fermen, 70 F.2d 602 (5<sup>th</sup> Cir. 1934).

<sup>10</sup> Fair v. Mississippi Valley Barge Line Co., 239 F. Supp. 158 (D.C. Tex., 1965).

<sup>11</sup> Carr v. Standard Oil Company, 181 F.2d (2d Cir.).

<sup>12</sup> Mohamed v. United Fruit Company, 12 F. Supp. 1000 (D.C. Mass., 1935).

<sup>13</sup> Fitzgerald v. A.L. Burbank & Company, 451 F.2d 670 (2d Cir. 1971).

carrier or ship owner.<sup>14</sup> The reason for this position is that the ship owner cannot interfere with the passenger-doctor relationship, and the ship owner cannot supervise the doctor, since the ship owner is not qualified to do so. This position is extended to physicians providing medical advice offshore by radio.<sup>15</sup>

Delay of treatment can also result in medical liability. In one case, a physician was not called for a sick seaman until 15 hours after the arrival of the ship into port. The seaman was delirious and his leg was badly swollen. Negligence in providing reasonable medical care was shown.<sup>16</sup>

In another case, a hospital discharged a seaman on the basis that a hospital in another port, seven sailing hours away, could better handle the case of a perforated ulcer. The ship's departure was delayed for several hours, and the Master on arrival in the second port failed to call a doctor for another several hours. The seaman died from peritonitis and the Master was held to be negligent.<sup>17</sup>

In yet another case, a seaman fell and broke his leg on board a ship while intoxicated. He objected to his superior's attempts to get him to a hospital. He was not shown to have suffered any ill effects from the delay in hospitalization and was not entitled to recover.<sup>18</sup>

Similarly, a ship owner was held not liable under the Jones Act where the Master informed his first mate that he had been struck by a steering wheel. The Master retired to his cabin and was later found dead. Since the first mate had repeatedly asked the Master whether he desired medical assistance and on each occasion the Master declined, the ship owner was found not to be liable.

In another case where a seaman who was being treated in a hospital left before he was cured, no negligence was found when the seaman further injured himself.

The above cases are mentioned only as examples of what is required of the crew in order to meet their obligation to provide adequate medical care at sea. Unlike the situation on land, where one voluntarily renders aid to a stranger, at sea there is legal duty to provide reasonable medical care under the relevant circumstances.

## DUTIES OF THE MASTER OF THE SHIP

The ship's Master is responsible to provide a safe and healthy environment for the crew. The actions of the Master may, in certain situations, bind the vessel's

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<sup>14</sup> *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364 (5<sup>th</sup> Cir. 1988).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Holiday v. Pacific Atlantic S.S. Company*, 99 F. Supp. 173 (D. Del. 1951).

<sup>17</sup> *Poindexter v. Groves*, 197 F.2d 915 (2d Cir. 1952).

<sup>18</sup> *Bloomquist v. T.J. MacCarthy S.S. Company*, 263 F.2d 590 (7<sup>th</sup> Cir. 1959).

owners or create personal liability regarding the to health and safety of passengers or crew members even those that may arise unexpectedly aboard a vessel. The Master stands in loco parentis and has the duty of looking out for those aboard the vessel. This duty applies to situations that may be potentially hazardous, cases of actual injury or illness, discovery of a crew member missing at sea, and death of a crew member.

Congress enacted specific statutes regarding provisions and accommodations for crew members, and these statutes provide for the personal liability of the vessel's Master in the event the statutes' dictates are not followed. 46 U.S.C. § 10902 provides that three or more of the members of a merchant vessel's crew may complain to any Captain of a U.S. Naval vessel, to Coast Guard officials, to American Consuls abroad, or to customs officials regarding inadequate or poor provisions aboard merchant vessels. Upon investigation, the authorities will notify the merchant vessel's Master in writing if they find that the crew members' charges are valid. If no action is taken by the Master to remedy this potential health problem, the Master is personally liable to a fine of \$100. Further, 46 U.S.C. § 10907 provides that failure of the Master to grant crew members permission to see such governmental authorities to make such a complaint, will result in the Master being liable for a fine of \$500. On the other hand, should investigations by the government officials prove that the provisions aboard the vessels are adequate, then the complaining crew members will be fined in the amount of such investigation costs.<sup>19</sup>

When a seaman becomes injured or ill at sea, the Master is responsible for providing reasonable medical care aboard the vessel. This includes first aid, and such treatment in medicine as the competency of the Master or ship's Doctor, if one is aboard, is able to provide. The Master must also decide whether or not to proceed to the next scheduled port of call or to deviate to some closer port in order to obtain medical attention.

The availability of medical facilities should always be considered when determining the best course of action in treating a medical emergency. The reasonableness of the Master's decision will likely be the conduct measured in the event that his or her deeds are later called into question. Considerations should be given to such means as: the accessibility of radio contact with a physician, the distance from medical evacuation by air, distance to the nearest port, the likelihood of securing competent medical care at the nearest port, the nature and severity of the injuries sustained by the crew member, and any advice offered by medical professionals during remote consultations.

The many advances in electronic communications from scheduled Morse code to satellite conversations on demand have brought the patient at sea closer to

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<sup>19</sup> Jones Act, 46 U.S.C. § 10903

shore, at least for the availability of medical advice. Even with a physician on a satellite communications device, the decision of when to treat aboard and when to evacuate a medical casualty is a case by case decision.

The historical root of an obligation to evacuate a medical casualty when adequate care is not apparent aboard the ship is rooted in a 1900 case<sup>20</sup> involving a seaman who fell from the yards of a vessel while rounding Cape Horn, sustaining injuries including a broken leg. The ship's Master and the carpenter set the leg, and the vessel arrived in San Francisco months later. The mariner recovered from his other injuries but his leg did not heal and ultimately led to the amputation of the limb. The disabled crew member sued the Master for failing to put into port for proper medical attention. The Supreme Court concluded then that the circumstances dictate the necessary decision, and that in this case, the Master should have sought medical attention beyond that which was available aboard the vessel. The case affirmed the historical duty of the ship owner and Master to provide proper medical treatment and attendance for a mariner taken ill or sustaining an injury in the service of the owner's ship.

In the case of the IROQUOIS<sup>21</sup>, the Master was allowed extremely broad discretion concerning the decision to deviate, and was even allowed to take the convenience of its cargo into account in making that decision. The court in that case stated: "We cannot say that in every instance where a serious accident occurs the Master is bound to disregard every other consideration and put into the nearest port, though if the accident happened within a reasonable distance of such port, his duty to do so would be manifested. Each case must depend upon its own circumstances, having reverenced to the seriousness of the injury, the care that can be given the sailor on ship board, the proximity of an intermediate port, the consequences of delay to the interests of the ship owner, the direction of the wind and the probability of its continuing in the same direction, and the fact whether a surgeon is likely to be found with competent skill. With reference to putting into port, all that can be demanded of the Master is the exercise of reasonable judgment, and the ordinary acquaintance of a seaman with the geography and resources of the country. He is not absolutely bound to put into such port if their cargo be such as would be seriously injured by the delay. Even the claims of humanity must be weighed in a balance with the loss that would probably occur to the owners of the ship and cargo. A seafaring life is a dangerous one, accidents of this kind are peculiarly liable to occur, and the general principle of law that a person entering a dangerous employment is regarded as assuming the ordinary risks of such employment is peculiarly applicable to the case of seamen."

Many factors are to be taken into consideration when a decision to deviate is contemplated. A modern court would probably place much less emphasis upon

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<sup>20</sup> Jones Act 46 U.S.C. § 688

<sup>21</sup> The IROQUOIS, 194 U.S. 240 (1904)

the convenience to the vessel owners or to cargo when balanced against the necessity for medical treatment to a seriously ill or injured crew member. If an incorrect decision is made, the most likely result will be a civil suit against the vessel owner by the injured or ill crew member, a suit which will not involve the vessel's Master. However, it should be remembered that any decision made regarding deviation or even treatment of a crew member may be scrutinized by the U.S. Coast Guard. Such U.S. Coast Guard scrutiny may result in a proceeding being instituted by the U.S. Coast Guard against the vessel Master's license for negligence or inattention to duty.

Many of the duties that are owed to the crew member are also owed to a passenger. A passenger is one who travels aboard a vessel by way of a contract, express or implied, for some payment of fare or other consideration to the carrier.<sup>22</sup> The standard of care for passengers and all other persons lawfully aboard a vessel has been "reasonable care under the circumstances."<sup>23</sup> This same standard is also afforded to visitors. Visitors are not passengers but have in fact boarded the vessel with the consent of the owner or operator of the vessel and are thereby entitled to the same standard of care.<sup>24</sup> If a passenger or visitor is injured, it is the duty of the Master to give such care as is reasonably practical given the facilities available on board. If a competent physician happens to be available and is consulted by the Master, following such advice will exonerate the Master.<sup>25</sup> Again, with seriously infirm passengers or crew members, it may be necessary to decide whether or not to deviate to a nonscheduled port to obtain medical attention.

The court in Gamble listed a number of factors, which should be considered when assessing the reasonableness of the decision to deviate or not to deviate for the care of passengers. The court stated that: "It is generally established that a vessel is not required to deviate from its course in every instance in order to procure medical assistance for an injured passenger." The factors to be considered parallel those mentioned above for crewmembers with the added responsibility that hospitality would demand. The role of passengers aboard a vessel differs slightly from that of crewmember in that the passenger is more of a guest aboard the vessel rather than a functional member of the crew, thus courtesy and kindness afforded to them are consideration in respect to care.

Other forms of passengers include stowaways and those rescued at sea. A stowaway is owed no greater duty than whatever constitutes "humane treatment".<sup>26</sup> Maltreatment or physical punishment is not approved by the law. Though a stowaway will not succeed in a cause based on negligence, one could

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<sup>22</sup> The Vueltabajo, 163 Fed. 594 (S.D. Ala. 1908).

<sup>23</sup> Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959).

<sup>24</sup> Rutledge v. A&P Boat Rentals, Inc., 633 F.Supp. 654 (W.D. La. 1986).

<sup>25</sup> Gamble v. The NEW BEDFORD, 111 F. Supp. 8, 12 (D.C. R.I. 1953)

<sup>26</sup> The Laura Madsen, 112 Fed. 72 (W.D. Wash. 1901); Ryder v. United States, 373 F. 2d 73 (4<sup>th</sup> Cir. 1967).

succeed in an action for willful or wanton misconduct. It is clearly the duty of the Master to give assistance to strangers rescued at sea and this is one area in particular where the owner is not held accountable if the Master neglects this duty.

The Master must, if he or she can do so without causing serious risk to vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost: and if he or she fails to do so, shall, upon conviction, be liable to a penalty of not exceeding \$1,000, or imprisonment for a term not exceeding 2 years, or both.<sup>27</sup>

In one case, the court exonerated the vessel's owner for its Master's failure to give aid to strangers.<sup>28</sup> The court noted that the International Salvage Treaty of 1910, which specifically holds the Master liable for failure to give such aid, was adopted by the United States (which was an original signatory to the treaty, and passed by the Congress as 46 U.S. Code § 2304.). Although the Master was not involved in the *Warshaeur* case, the court, implied that the Master could be held civilly liable for damages for failure to give aid, as well as criminally liable under the statute.

Politically unstable regions of the world invite consideration of the refugee. As a medical matter, humanitarian aid should be provided to such persons, protecting the vessel's own crew appropriately from the possibility of unknown communicable diseases. The legal consequences and exposure to liability by rendering humanitarian aid are few. The taking aboard of shipwrecked or persons fleeing political oppression raises legal issues better dealt with after the successful rescue and rendering of aid to such distressed persons. The humanitarian care and safety of human life should be addressed first, and political or legal issues dealt with thereafter.

Two other parties often allowed aboard ship who are not exactly the responsibility of the Master are longshoreman and scientific personnel. When a longshoreman is injured aboard a merchant vessel, the vessel is usually tied up at pier side. Responsibility is shifted in large part to the longshoreman's hatch boss, ship foreman, or even to the vessel's port captain and pier personnel. Of course if first aid can be rendered or aid given by personnel within the Master's control, then such should be done immediately.

The Oceanographic Research Vessels Act (ORVA)<sup>29</sup> exempts scientific personnel from the general protections of Title 46 of the United States Code relating to the welfare and protection of seamen, including the Jones Act. This is because such personnel are usually employed by a separate institution, university, or company. The application of ORVA is only to a vessel officially

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<sup>27</sup> 46 U.S.C. § 2303 and § 2304.

<sup>28</sup> *Warshaeur v. Lloyd Sabaudo S.A.*, 71 F.2d 146 (2d Cir. 1934)

<sup>29</sup> 46 U.S.C. §§ 441-445.

inspected and classified by the U.S. Coast Guard as an “oceanographic research vessel.”<sup>30</sup> The exemption relieves scientists of the requirement to obtain seaman’s documents. Though not eligible for Jones Act protection, the general maritime law does protect scientific personnel, and claims for unseaworthiness can be brought.

One last category of crewmembers is that of oil rig crews. The application of law to oil rigs is dependent upon whether the rig is fixed or floating. A fixed rig is deemed an artificial island, and is not generally subject to the precepts of general maritime law, which is not to say a vessel servicing such a platform is not. A floating, towable platform, however, is accommodated under the Jones Act. The standard of care for a Jones Act negligence claim is applied.

An interesting legal situation may occur when a vessel’s Master is faced with a crewmember whom he suspects may be mentally ill or suffering from delirium tremens, and presents as a danger to himself or herself and perhaps to other crewmembers.

The U.S. Coast Guard has instituted licensing proceedings against Masters who failed to safeguard mentally infirm crewmembers. The necessity for placing the infirm crewmember under restraint, as well as the form and extent of restraint used, have been closely examined by the Coast Guard.

In Commandant’s Decision No. 629, the U.S. Coast Guard was faced with a situation wherein a Master was charged for failure to adequately guard a mentally infirm crewmember. In that case, the crewmember had exhibited symptoms of mental infirmity and had actually jumped overboard at one point. The evidence at the hearing showed that the crewmember was suffering from delirium tremens, as result of suddenly stopping heavy alcohol use. An adequate guard was not placed over the crewmember, even after he had jumped overboard and had been rescued. The crewmember later killed himself by slashing his wrist with a piece of glass he had obtained from the bridge. The Coast Guard, holding that a person in such a condition must be guarded until he regained “mental composure and the ability to care for himself”, found the Master negligent in the license proceedings. Based on this ruling, the fact that the crewmember was not violent and was outwardly calm after having been shackled for a short period of time did not relieve the Master from his responsibility. The reasoning was that the crewmember had appeared to be rational before he had jumped overboard, but the act of jumping highly discredited any such appearances. In a similar case, a ship owner was found liable for contributing to the death of a seaman who disappeared at sea. In that case, the Master had been aware of the seaman’s severe psychiatric condition and was in possession

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<sup>30</sup> Smith v. Odom Offshore Surveys, Inc., 791 F.2d 211 (11<sup>th</sup> Cir. 1993).

of the seaman's suicide note prior to the seaman's death. The court determined that the seaman should have been under constant observation.<sup>31</sup>

In Commandant's Decision No. 910, the U.S. Coast Guard determined a vessel's Master used unreasonable force in subduing a mentally infirm crewmember, actually shooting and killing him. The decision discussed the right of Masters to use firearms to arrest a mutinous seaman, but contrasted this with a mentally infirm seaman, whose mental infirmity was known to the Master. Since the crewmember was not actively creating any danger to others in the crew, it was held that the Master's duty to protect a mentally ill crewmember would predominate over his or her duty to make an arrest for purposes of discipline and protecting his or her authority in command. The seaman in this case was also suffering from delirium tremens, and the "Ship's Medicine Chest" was sited in discussing the proper treatment of a crew member so afflicted. The vessel's Master was found negligent and action was taken against his license. Although not discussed, the Master may have been subjected to criminal penalties in that case.

By contrast with the decisions mentioned above In U.S. Coast Guard Decision No. 594, a Master was found not negligent for failing to safeguard a crew member who exhibited symptoms of hallucinations. The crew member was lost at sea as a result of his affliction, but the U.S. Coast Guard exonerated the Master. The salient difference between this situation and others discussed thus far is that the Master here, although aware of the hallucinations of the crew member, was not sufficiently apprised of any tendency toward violence or self-injury.

The U.S. Coast Guard stated: "While the shipmasters have well defined responsibility, including timely and apt measures for protection of their crew members, the evidence of this case falls far short of establishing culpable fault or negligence against this shipmaster. The deranged crew member had committed no violence to either his shipmates or himself. He had readily responded to the reasoning of his shipmates; and those who were in more close association with him than the Master were reluctant to even suggest much less recommend his confinement. Mere delusions are not sufficient basis for committing to an institution."

Whether a vessel's Master may be held negligent for failure to search for a crew member missing at sea depends upon the circumstances of the case. [An appellate court](#) found negligence where a Master of a vessel made no attempt to search for a seaman who was not reported missing until 5 hours after he was last seen.<sup>32</sup> The Court of Appeals stated: "We think the Court was in error (referring to the lower court) in its basic premise that Gardner was overboard soon after he was last seen. In truth, no one could easily know with any degree of certainty

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<sup>31</sup> Bednar v. U.S. Lines, Inc., 360 F. Supp. 1313 (D.C. Ohio 1973).

<sup>32</sup> Gardner v. National Bulk Carriers, Inc., 310 F.2d 284 (4<sup>th</sup> Cir. 1962).

whether the fatal plunge occurred 5 minutes after he was last seen, or 5 minutes before he was reported missing. Unless such a search was made by that or other vessels in the area, it could not be determined that Gardner was beyond rescue.”

However, a court in another case declined to find negligence where a seaman was last seen 11 hours before he was reported missing.<sup>33</sup> In this case the Master turned the vessel back on its course, but stopped searching when darkness fell, 70 miles from the place where the vessel had been when the seaman had last been seen. The court stated: “A series of speculations must all be indulged in and resolved in favor of the missing crew member in order to find any basis for saying that he could possibly have stayed afloat and alive long enough to be pulled up. Each of these speculations must also reach a result which is contrary to the overwhelming probabilities.”

Even if a crewmember has not been seen for hours and is suddenly determined to be missing, a search should be made. This is necessary because it is usually unclear whether or not the crewmember fell overboard just after he or she was last seen, or just before he or she was noted to be missing. There is, however, a rule of reason applied as to when the search can be called off. When the probabilities are that the crewmember will not be rescued, it is doubtful that the U.S. Coast Guard or a court will question a Master who acts reasonably in that regard.

A Master’s responsibility, of course, does not completely end when an injured or infirm crewmember dies during a voyage. Even if the Master has acted reasonably and well up to that point, he or she is still tasked with certain duties concerning the deceased crewmember. 46 U.S.C. § 10706 defines such duties: “When a seaman dies in the United States and is entitled at death to claim money, property, or wages from the Master or owner of a vessel on which the seaman served, the Master or owner shall deliver the money, property, and wages to a district court of the United States within one week of the seaman’s death. If the seaman’s death occurs at sea, such money, property, or wages shall be delivered to district court or a consular officer within one week of the vessel’s arrival at the first port call after the seaman’s death.”

In summary, the law imposes duties on owners and masters of ships to care for the health of members of a crew, passengers, guests and others. This includes being able to respond to medical emergencies that may arise. Pre-planning for medical situations and acting responsibly when problems arise will be helpful in avoiding legal liability.

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<sup>33</sup> Miller v. Farrell Lines, 247 F. 2d 503 (2<sup>nd</sup> Cir. 1957).